

**Potential Charter revisions for the May 2013 Ballot**  
**Pending Proposals for Review and Recommendation**

**ARTICLE II NOMINATIONS AND ELECTIONS.**

**Section 2.1 CITY ELECTIONS.**

**C. Recall.** Any elected officer of the City may be removed from office, for stated reasons, by those voters who are qualified to vote for a successor to such office. A completed petition under this section shall be signed by a number of qualified voters equal to at least [REDACTED] percent of the qualified voters who were entitled to vote at the last election for the officer whose recall is sought.

The Council shall enact, within sixty days of the adoption of this Charter, an ordinance providing for:

1. The general conduct of recall election.
2. Receipt, by the City Clerk, prior to the conduct of any recall election of a petition bearing authentic signatures of the required a number of registered qualified voters equal to at least twenty percent of the total number of votes cast in the election of the officer whose recall is sought;
3. Completion of a recall petition with sixty days of filing notice with the City Clerk of intent to circulate a petition for recall; and
4. Recall petitions to specify the reasons for which recall is sought.

**REVISED PROPOSAL:**

When a recall election is to required be ordered, it shall be held on the next uniform election date as specified by state law, or the date of the next election that will be conducted by the County Elections Administrator. The top of each page of the recall petition must contain language detailing the specific reason or justification for the recall constituting neglect of office, incompetency, misconduct, malfeasance, or unfitness for office.

No recall petition shall be filed against any elected officer within six months after taking office, nor within twelve months of the end of the elected officer's term of office, nor in case of an officer who was the subject of an unsuccessful recall election, until six months after that election. Should the elected officer, whose recall is sought, resign, no recall election shall be held.

**Recall provisions—NCL model charter and other cities:**

**San Antonio: requires 10% of qualified voters at the time of the last regular election.**

**Dallas: requires 15% of voters who were entitled to vote at the last election.**

**Ft. Worth: 20% of the persons entitled to vote for successor.**

**Austin: requires 10% of qualified voters. Austin has a provision stating that no council member shall be subject to more than one election during a term of office.**

Houston: requires 25% of those voting at the Democratic primary election. Houston requires grounds be stated: "petition shall set forth distinctly and specifically grounds showing or tending to show some ground of incompetency or unfitness for or misconduct or malfeasance in the office".) Houston also limits recall elections to one in any calendar year.

The NCL Model Charter states that recall petitions are usually signed by qualified voters of the city equal in number to at least 10 to 20 percent of the total number of qualified voters to vote at the last regular election.

## **ARTICLE III THE CITY COUNCIL.**

### **Section 3.11 INITIATIVE.**

Whenever a number of ~~registered qualified~~ voters equal to at least                      ~~five percent of the voters who voted in the last general City election~~ sign a petition setting forth the precise content of an ordinance desired by the signers, the Council must place that ordinance on the agenda of a Council meeting to be held within thirty working days of the receipt, by the City Clerk, of the petition hearing the authenticated names and addresses of the petitioners. Such an item shall be treated by the Council exactly as any other proposed ordinance.

#### **REVISED PROPOSAL:**

Should an ordinance proposed by such petition not be enacted by the Council, or should it be enacted in an amended form, a second petition, signed by a number of ~~registered qualified~~ voters equal to at least                      ~~five percent of the voters who voted in the last general City election~~, may be submitted to the City Clerk and that official shall have twenty working days in which to authenticate the signatures and thereafter must place the proposed ordinance on the ballot at the next ~~general~~ uniform election date as specified in State law, or the date of the next election conducted by the County Elections Administrator, if the proposal received the favorable vote of a majority of those voting in that election it shall thereupon become a City ordinance.

The council is not obligated to consider the same ordinance initiated by petition, or one that is substantially the same, more often than once in two years.

#### **Initiative provisions—NCL model charter and other cities:**

The NCL Model Charter states that initiative petitions are usually signed by registered voters of the city equal in number to at least 5 to 10 percent of the total number of qualified voters to vote at the last regular election.

San Antonio, Dallas, Austin and Ft. Worth base their calculation of the number of needed signatures on a percentage of the registered voters or qualified voters (essentially the same thing).

Houston bases its calculation of the number of needed signatures on a percentage of persons voting at the Democratic primary election. As Houston is such a large city, the number of

signatures needed is likely to be comparable to the number of signatures typically needed in the other major Texas cities.

### **ARTICLE III THE CITY COUNCIL.**

#### **Section 3.5 CITY COUNCIL PROCEDURES AND RULES.**

A. **Meetings.** Regular meetings of the Council shall be held in Council chambers a minimum of one time per week at such times as may be prescribed by resolution. Provided however, that the Council by resolution may cancel one or more regular meetings, ~~not to exceed three meetings during each calendar year,~~ provided that the Council may not cancel more than two regular meetings in a row such canceled meetings are not consecutive. Special meetings and informal work sessions of the Council shall be called by the Mayor or a majority of the entire Council by giving written notice to the City Clerk. All meetings of the Council and of any committees thereof shall be held as permitted by the Texas Open Meeting Act.

Note: The NCL Model Charter has this language: "The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule."

#### **Section 3.6 LEGISLATIVE COMMITTEES.**

A. The Representatives may resolve themselves into committees, both standing and special, when this is convenient for the conduct of legislative business, including the investigative powers described in Section 3.8. Rules governing the organization and procedures of these committees shall be made by the Council, and the Mayor shall have no power to veto any of those rules except upon grounds of illegality.

#### **REVISED PROPOSAL**

B. The Council shall establish a Financial Oversight and Audit Committee "FOAC" for the purpose of providing legislative oversight of the function of the Internal Auditor, to review the financial policies of the City, and to formulate recommendations for the City Council regarding City finances and other matters referred by the City Council or City Manager. The FOAC shall be comprised of four members of the City Council, the Chief Internal auditor, and the City manager or designee and shall meet at annually and as needed.

Note: In conjunction with this provision, see also the proposed provision in Section 3.20 C on in the draft of new proposals.

Note: This proposal, along with additional language in Section 3.20 C, is made to ensure that there will always be an independent internal audit function with the appropriate types of

oversight by both the City Council and the City Manager. (See the document with new proposals for the language in 3.20 C).

### **Section 3.9 ORDINANCES IN GENERAL.**

**C. Actions Requiring Ordinances.** The Council may exercise the following powers by ordinance only:

1. Authorize the conveyance of any City real property except as provided in section 3.18;
- ~~2. Adopt or amend any administrative code and establish, abolish, alter or combine any City departments, so long as such action is not in conflict with this Charter;~~
3. Amend, extend, or repeal any ~~ordinance~~ previously adopted;
4. Prescribe a fine or penalty or establish any rule or regulation for the violation of which a fine or other penalty is imposed;
- ~~5. Adopt Civil Service Rules.~~

Note: A broader exemption for conveyances is drafted in section 3.18 and the amendment to subsection C 5 is in conjunction with change in section 6.1-6 A. Section 6.1-6 A also relates to the requirement for the adoption of CSC Rules.

### **REVISED PROPOSAL:**

#### **Section 3.19. PROHIBITING THE SALE OF ALCOHOLIC BEVERAGES IN RESIDENTIAL SECTIONS OF THE CITY.**

The sale of beer and liquor is hereby prohibited in residential areas of the City. For purposes of this section, residential areas shall mean areas restricted exclusively to residential uses and not areas zoned to permit mixed, commercial and residential uses.

### **Section 3.20 ETHICS AND ACCOUNTABILITY.**

**A. Ethics Review Commission.** The Council shall, by ordinance, establish an independent ethics review commission to administer and enforce the ethics section of the City Code. To the extent permitted by Texas law, the Council shall authorize the commission to issue advisory opinions, conduct investigations, request witness testimony and production of evidence, make determinations on whether a violation has occurred, and issue decisions and appropriate sanctions. The ethics review commission shall have the power to enforce its decisions by assessing civil fines and other sanctions authorized by ordinance. The Council shall provide sufficient resources to the commission to enable it to perform the duties assigned to it under the Charter and City Code.

Note: Information provided by the San Antonio City Attorneys Office on January 15, 2013 was that the San Antonio Ethics Commission has never issued a civil fine. They have considered it on several occasions, but have always chosen to impose other sanctions, such as admonishment

or a requirement for additional training. Admonishment is a sanction currently available under El Paso's Ethics Ordinance. There have been a couple of times where the San Antonio Ethics Commission referred a matter to the police for a criminal investigation. About 10 or 12 years ago, San Antonio went through a process similar to that in El Paso's Ethics Ordinance and found a complaint was frivolous and dismissed it. A recent complaint was to be referred to the San Antonio Commission as being frivolous, but it was withdrawn before the process started.

Section A is the text from Section 2.2 G which is moved to this location to be under the new section titled Ethics and is amended to add authority to impose civil fines, as authorized by an ordinance. San Antonio has a similar provision in their charter granting this type of authority.

## **ARTICLE VI CIVIL SERVICE**

### **Section 6.1-4 QUALIFICATIONS.**

Members of the Commission must be residents of the City at the time of their appointment and remain a resident of the City throughout their term of office. No Commissioner may hold any salaried public office or other employment compensated by the City and any violation of this provision shall be deemed malfeasance in office and cause for removal therefrom. At least two Commissioners must hold or have retired from positions other than managerial or professional. No Commissioner shall be related in any manner described in Article III, Section 3.3 B to any employee of the City, the Public Service Board, or an entity that has a contract with the City to operate or manage any City facility or department. No more than three Commissioners may be former city employees, and any such Commissioners are not eligible for appointment until two years following separation from the City. Any Commissioner may be either actively employed or retired.

Note: Adding this provision will eliminate an area of potentially significant conflicts of interest that can result in the need for a Commissioner to abstain from participation in Commission actions on a regular basis.

## **Section 6.5 CERTIFICATION AND SELECTION OF CANDIDATES**

### **Section 6.5-1 CERTIFICATION PROCESS.**

A. The Human Resources Director shall certify candidates eligible for hire or promotion based solely on their qualifications in accordance with established ~~departmental~~ administrative policies and procedures or by Rule, which may allow a preference for the hiring and promotion of former employees separated without fault or delinquency, or for other just and reasonable cause in conformity with the Charter and consistent with the principles of the civil service system and established policies.

B. When appropriate needed, the Human Resources Director will establish administrative procedures as necessary for the certification and selection process, including procedures to allow for a fair and competitive selection process designed to meet the needs of the departments while ensuring that the most qualified candidates are certified for selection. ~~compile lists of eligible candidates for job classifications and consolidate, revise and maintain them as necessary and appropriate, in accordance with established policies and procedures or by Rule.~~

C. When an employee is eligible for appointment to a position, but there is no vacancy in that position, the employee may be certified to an appropriate lower grade position. ~~If a vacancy occurs in the higher graded position, while the employee is in good standing on the eligible list, the employee may be appointed to that position in accordance with the procedures established for the order of certification.~~

D. The Human Resources Director will permit persons on eligible lists to waive certification, reinstatement, or appointment two times, after which the person's name may be removed from such list in accordance with procedures established by Rule.

#### **Section 6.5-2 RULE OF FIVE.**

As necessary for the promotional process, the Human Resources Director shall certify the five highest names on ~~the proper a promotional only~~ eligible list for ~~one a~~ vacancy, and additional names ~~one additional name (the next highest) for each additional vacancy except as may be provided by appropriate policies and procedures or in situations where eligible persons are serving in the department in which the vacancy exists and as authorized by Rule, in cases where a certification for incapacity or a reinstatement from layoff is being made, where there are fewer than five names on the proper eligible list, and in situations where eligible persons are serving in the department in which the vacancy exists.~~

Note: The CSC proposed to make revisions to the language and would read as set forth below. Upon reviewing their language, we believe the language used will create consequences that were not intended or discussed, such as requiring promotional applicants who scored lower than original applicants on a test to be placed ahead of higher scoring original applicants. It also appears that they may have struck out the language relating to the inclusion of persons within the department upon the mistaken belief that such persons could be put on a promotional list without taking the test.

#### **Section 6.5-2 RULE OF FIVE.**

As necessary for the promotional process only, the Human Resources Director shall certify the five highest names on ~~the proper a promotional~~ eligible list for ~~one a~~ vacancy. ~~one additional name (the next highest) for each additional vacancy except as may be provided by appropriate policies and procedures or, in cases where a certification~~

~~for incapacity or a reinstatement from layoff is being made, where there are fewer than five names on the proper eligible list, and in situations where eligible persons are serving in the department in which the vacancy exists.~~

Note: Revising section 6.5 will move the details from the Charter into administrative policies and procedures, eliminating the need for the provisions in 6.5-1 C and D and all of 6.7.

## **Section 6.10 LAY-OFF; LEAVE OF ABSENCE; VACATIONS; RESIGNATION AND REINSTATEMENT**

### **Section 6.10-3 LEAVE OF ABSENCE; REINSTATEMENT.**

The City Manager shall establish administrative policies and procedures regarding the eligibility of employees to take a leave of absence and to be reinstated, consistent with the provisions of this Article and all applicable federal and state employment laws.

~~Permanent employees may be granted a leave of absence by the City Manager or designee under conditions set forth in the Rules. Provisions regarding the reinstatement of an employee upon the expiration of a leave of absence and the separation from the service of an employee who fails to report at the expiration of a leave of absence will be set forth in the Rules.~~

### **Section 6.10-4 SICK LEAVE.**

~~Classified employees are entitled to an annual sick leave, in accordance with the provisions set forth in the Rules. The City Manager may grant the same sick leave benefits to provisional appointees.~~

### **Section 6.10-5 VACATIONS.**

~~Classified employees who have held a city position for a period of six months, and who have successfully completed their respective probationary periods, will be entitled to take accrued vacation with pay as specified in the Rules.~~

### **Section 6.10-6 RESIGNATION.**

~~The resignation of a classified employee will be filed and accepted on behalf of the City in accordance with the provisions set forth in the Rules.~~

### **Section 6.10-7 REINSTATEMENT FOLLOWING RESIGNATION.**

~~Any person who has held a classified position and has resigned from the service in good standing and without fault or delinquency may seek reinstatement in accordance with the provisions set forth in the Rules.~~

Note: The above amendment will require that administrative policies and procedures address the matters such as leave of absence, resignation, reinstatement which allows the specific details to



be deleted from the Charter. The provisions relating to vacations and sick leave will be addressed in the compensation and classification plan, per Section 6.4-1.

## **Section 6.11 TRANSFER AND REDUCTION.**

### **Section 6.11-1 ~~WHEN TRANSFER IS PERMISSIBLE~~ AND REDUCTION.**

The Human Resources Director shall establish administrative policies and procedures for the transfer and reduction process, including transfer and reduction for physical incapacity, consistent with the provisions of this Article and all applicable federal and state employment laws. Transfers may be made from a position in one department to a similar position, of the same class and grade, in another department, in accordance with the procedures set forth in the Rules.

### **~~Section 6.11-2 REDUCTION FOR PHYSICAL INCAPACITY.~~**

~~An employee may be reduced from a higher to a lower class when physically unable to perform the duties of the higher position, in accordance with the provisions set forth in the Rules.~~

Note: The above amendment will require that administrative policies and procedures address transfers and reduction in force which allows the specific details to be deleted from the Charter.

## **Section 6.13 DISCHARGE, APPEAL, HEARINGS.**

### **Section 6.13-3 CAUSES OF SUSPENSION, REDUCTION OR DISCHARGE.**

The following, which may be further defined in the Rules, may constitute causes for discharge, suspension or reduction in grade of ~~permanent~~ regular employees:

J. Inducing or assisting another to commit an unlawful act;

L. Engaging in improper political activity;

#### **Note:**

The San Antonio Civil Service Charter contains the following restrictions on political activity:  
Sec. 78. - Prohibitions.

(b) No person seeking appointment to or promotion in the classified civil service shall directly or indirectly give, render or pay any money, service or other valuable thing to any person on account of or in connection with any test, appointment or promotion.

(c) No city employee shall continue in such position after becoming a candidate for nomination or election to any City or Bexar County elected office.

(d) No city employee may circulate petitions for city council candidates or city elections, receive or solicit any contribution for any city council candidate or city election.

(e) No city employee shall make any contribution to the campaign funds of any candidate for City office or take any part in the management or affairs or political campaign of any candidate



for City office, further than in the exercise of his rights as a citizen to express his opinion and to cast his vote.

(f) No employee of the city may wear city council campaign buttons nor distribute literature at work or in a city uniform or in the offices or building of the City of San Antonio.

(g) City employee organizations shall not be allowed to make any contribution to the campaign funds of any candidate for City office or the take part in the management or affairs of a political campaign for City office, further than to express opinions, except as authorized by state law. Any person who by himself or with others willfully or intentionally violates any of the provisions of this section shall be subject to such penalty as may be prescribed by ordinance. Any person convicted under this section shall be ineligible, for a period of five years, for appointment to an office or employment in the classified civil service, and shall, if he be an official or employee of the City, immediately forfeit such office or employment.

The Dallas Civil Service Charter contains the following restrictions on political activity:

Section 16 (b) To avoid undue influence of city employees on the outcome of city council elections and to avoid undue influence of city council members or candidates for city council on city employees, the following restrictions are imposed:

(1) No employee of the city or association of such employees may publicly endorse or actively support candidates for the city council or any political organization or association organized to support candidates for the city council.

(2) No employee of the city may circulate petitions for city council candidates, although an employee may sign such a petition.

(3) No employee of the city may contribute, directly or indirectly or through an organization or association to such a campaign nor solicit or receive contributions for a city council candidate.

(4) No employee of the city may wear city council campaign buttons nor distribute campaign literature at work or in a city uniform or in the offices or buildings of the City of Dallas.

(c) In elections other than for city council of the City of Dallas, an employee of the city may not:

(1) use the prestige of the employee's position with the city for any partisan candidate;

(2) manage a partisan political campaign;

(3) solicit or receive contributions for such a campaign; or

(4) actively support a candidate except on the employee's own time while not in a city uniform nor in an office or building of the City of Dallas.

(d) Notwithstanding any conflict with Subsections (b) and (c) of this section, a sworn employee of the fire-rescue department or the police department may engage in political activities to the extent permitted by state law.